

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

<b>In re:</b>	)	<b>Chapter 11</b>
	)	
<b>CIRCUIT CITY STORES, INC., et al.,</b>	)	<b>Case No. 08-35653-KRH</b>
	)	
<b>Debtors.</b>	)	<b>(Jointly Administered)</b>

**RESPONSE OF NAP NORTHPOINT LLC TO LIQUIDATING  
TRUST'S EIGHTH OMNIBUS OBJECTION TO LANDLORD CLAIMS**

Comes now NAP Northpoint LLC ("NAP"), a creditor and former landlord of the Debtor Circuit City Stores, Inc. in this proceeding and states as follow in response to the Liquidating Trust's Eighth Omnibus Objection to Landlord Claims (Reduction of Certain Partially Invalid Claims, Reclassification of Certain Misclassified Claims, Disallowance of Certain Invalid Claims, Disallowance of Certain Late Filed Claims, and Disallowance of Certain Amended Claims) (the "Objection"):

1. NAP leased to Circuit City Stores, Inc. certain real property with improvements thereon known as 1843 Pine Island Road, NE, Cape Coral, Florida 33909 (Store No. 4136) pursuant to a lease agreement that would have expired pursuant to its terms on January 31, 2019.
2. Debtor rejected the Lease effective March 10, 2009.

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Counsel to NAP Northpoint LLC

3. Pursuant to the terms of the lease and Section 502(b)(6) of the Bankruptcy Code, on April 27, 2009 NAP filed its proof of claim for rejection damages aggregating \$897,794.02. Attached to the proof of claim was an itemization of the rejection damages. NAP did not attach the lease to its proof of claim because the Debtor was already in possession of a copy of the lease.

4. The Liquidating Trust has now objected to the claim and proposed a reduction of approximately \$300,000 without explaining its rationale in any way.

5. Attached hereto is a copy of NAP's proof of claim with an exhibit thereto stating the components of its claim, which it reiterates in full herein.

WHEREFORE, NAP prays that this Court overrule the objection to its claim in all respects and order the claim allowed in full without providing the Liquidating Trust the right to continue to file more objections thereto *seriatim*.

NAP NORTHPOINT LLC

By: /s/ Augustus C. Epps, Jr.  
Augustus C. Epps, Jr., counsel

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**CERTIFICATE OF SERVICE**

I, Augustus C. Epps, Jr., hereby certify that on the 4<sup>th</sup> day of April 2011, a true and correct copy of NAP Northpoint LLC's Response to Liquidating Trust's Eighth Omnibus Objection to Landlord Claims has been served electronically using the ECF system on all registered users of the CM/ECF system who have filed notices of appearance in this matter.

/s/ Augustus C. Epps, Jr.  
Augustus C. Epps, Jr.

1141255v1

Filed 4/23/09

B 10 (Official Form 10) (12/08)

<b>UNITED STATES BANKRUPTCY COURT      Eastern District of Virginia</b>		<b>PROOF OF CLAIM</b>
Name of Debtor: <b>Circuit City Stores, Inc.</b>		Case Number: <b>08-35653</b>
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (the person or other entity to whom the debtor owes money or property): <b>NAP Northpoint, LLC</b>		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim.  Court Claim Number: _____ (if known)  Filed on: _____
Name and address where notices should be sent: <b>Augustus C. Epps, Jr., Esquire</b> <b>Christian &amp; Barton, L.L.P.</b> <b>909 East Main Street, Suite 1200, Richmond, VA 23219-3095</b>  Telephone number: <b>(804) 697-4104</b>		
Name and address where payment should be sent (if different from above): <b>Mr. Greg Browne</b> <b>NAP Southeast, Inc.</b> <b>7500 College Parkway, Fort Myers, Florida 33907</b>  Telephone number: <b>(239) 938-3341</b>		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.  <input type="checkbox"/> Check this box if you are the debtor or trustee in this case.
1. Amount of Claim as of Date Case Filed: \$ <b>897,794.02*</b> *Amount includes § 502(b)(6) and other damages as well as amounts for which § 503(b)(1) priority may be asserted. See attachment for breakdown. If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.  If all or part of your claim is entitled to priority, complete item 5.  <input checked="" type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.		5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.  Specify the priority of the claim.  <input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).  <input type="checkbox"/> Wages, salaries, or commissions (up to \$10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507 (a)(4).  <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507 (a)(5).  <input type="checkbox"/> Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507 (a)(7).  <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507 (a)(8).  <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507 (a)( ).  Amount entitled to priority: \$ _____
2. Basis for Claim: <u>tenant obligations under lease (copy of lease attached)</u> (See instruction #2 on reverse side.) 3. Last four digits of any number by which creditor identifies debtor: _____  3a. Debtor may have scheduled account as: <u>Store No. 4136</u> (See instruction #3a on reverse side.) 4. Secured Claim (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.  Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe:  Value of Property: \$ _____ Annual Interest Rate: % _____  Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$ _____ Basis for perfection: _____  Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____		
6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.  7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction 7 and definition of "redacted" on reverse side.)  DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.  If the documents are not available, please explain:		*Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.
Date: <b>04/23/2009</b>	Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.  /s/ Augustus C. Epps, Jr., counsel	

FOR CREDITOR USE ONLY

**RECEIVED**  
**APR 27 2009**

KLEITZMAN CARSON CONSULTANTS

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

- ☒ Date Stamped Copy Returned
- ☐ No self addressed stamped envelope
- ☐ No copy to return

Circuit City Stores, Inc.  
Case no. 08-35653

Lessor:  
NAP Northpoint LLC

Location:  
Store #4136, 1843 Pine Island Road, NE  
Cape Coral, Florida 33909

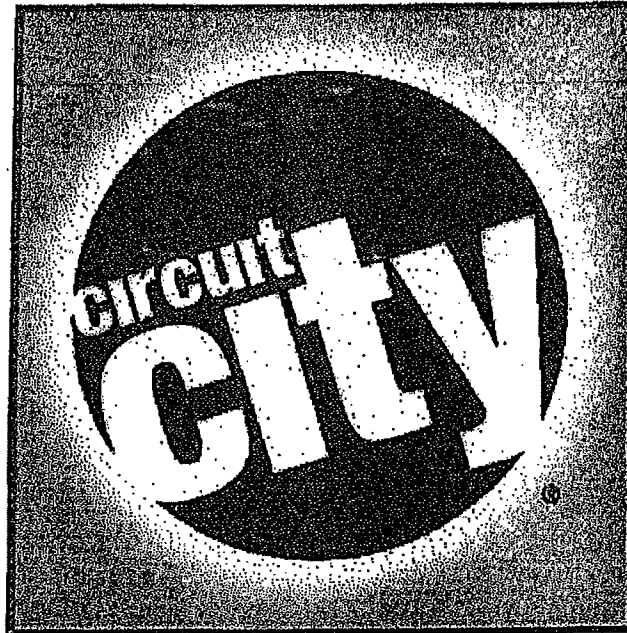
Lease Expiration:  
January 31, 2019  
15% equals 17.8 months

**Claim:\***

November 2008 rent and CAM		\$ 26,849.54
12 months rent @ \$46,497.00 (included CAM)	\$557,964.00	
Rent for 15% of remaining term	827,646.00	827,646.00
Re-key (main door)		249.10
2008 Real Estate Taxes		11,613.96
HVAC Inspection		90.00
Sign Removal		700.00
2008 Annual CAM and Insurance Reconciliation		-20,953.11
Attorneys fees and costs as of March 1, 2009		780.00
<b>Subtotal</b>		<b>\$846,975.49</b>
<b>6% Florida Sales Tax payable on the above</b>		<b>50,818.53</b>
<b>Total</b>		<b><u>\$897,794.02</u></b>

\*Debtor rejected lease effective March 10, 2009. This claim is without prejudice to creditor's position that a prorated portion of November rent, taxes, and assessments, attorneys fees and costs and other post-petition obligations constitute Chapter 11 administrative expenses under 11 U.S.C. § 365(d)(3), and also without prejudice to creditor's right to claim all or a portion of its additional attorneys fees and costs, taxes, CAM and other costs as administrative expenses at the appropriate time.

CAPE CORAL, FL



**LEASE AGREEMENT**

by and between

**NAP NORTHPOINT LLC**

as Landlord

and

**CIRCUIT CITY STORES, INC.**

as Tenant

**Northpoint Shopping Center**

## Circuit City Stores, Inc.

### STORE LOCATION:

Northpoint Shopping Center  
1843 NE Pine Island Road  
Cape Coral, FL 33990

**(Bankruptcy filed 11/10/08)**

<u>DATE</u> <u>BILLED</u>	<u>RENT</u>	<u>RET</u>	<u>CAM</u>	<u>SALES TAX</u>	<u>TOTAL</u>	<u>PAID AMT</u>	<u>BALANCE</u> <u>DUE</u>
11/1/08	\$ 20,798.94	\$ -	\$ 6,050.60	\$ 1,610.97	\$ 28,460.51	\$0.00	\$ 28,460.51
11/11/08	-	12,688.69	-	761.32	13,450.01	1,139.21	12,310.80
12/01/08	20,798.94	-	6,050.60	1,610.97	28,460.51	28,460.51	0.00
01/01/09	20,798.94	-	4,907.36	1,542.38	27,248.68	28,460.51	(1,211.83)
02/01/09	20,798.94	-	4,907.36	1,542.38	27,248.68	28,460.51	(1,211.83)
03/01 - 3/11/09	7,380.27	-	1,741.32	547.30	9,668.89	10,098.90	\$ (430.01)
<b>TOTALS</b>	<b>\$ 90,576.03</b>	<b>\$ 12,688.69</b>	<b>\$ 23,657.24</b>	<b>\$ 7,615.32</b>	<b>\$ 134,537.28</b>	<b>\$ 96,619.64</b>	<b>\$ 37,917.64</b>
<b>Less 2008 CAM Reconciliation Credit Due</b>							<b>(22,210.30)</b>
<b>TOTAL DUE: 11/1/08 - 3/11/09</b>							<b><u>\$ 15,707.34</u></b>

	<u>RENT</u>	<u>RET *</u>	<u>CAM **</u>	<u>SALES TAX</u>	<u>TOTAL</u>
Monthly Amount	\$ 20,798.94		\$ 4,907.36	\$ 1,542.38	\$ 27,248.68
3/12/09 - 12/31/09	201,721.23	79,977.60	47,594.67	14,958.95	344,252.45
2010	249,587.28	79,977.60	58,888.32	18,508.54	406,961.74
2011	249,587.28	79,977.60	58,888.32	18,508.54	406,961.74
2012	249,587.28	79,977.60	58,888.32	18,508.54	406,961.74
2013	249,587.28	79,977.60	58,888.32	18,508.54	406,961.74
2014	249,587.28	79,977.60	58,888.32	18,508.54	406,961.74
2015	249,587.28	79,977.60	58,888.32	18,508.54	406,961.74
2016	249,587.28	79,977.60	58,888.32	18,508.54	406,961.74
2017	249,587.28	79,977.60	58,888.32	18,508.54	406,961.74
2018	249,587.28	79,977.60	58,888.32	18,508.54	406,961.74
1/1/19 - 01/31/19	20,798.94	79,977.60	4,907.36	1,542.38	107,226.28
	<b>\$ 2,468,805.69</b>	<b>\$ 879,753.60</b>	<b>\$ 582,496.91</b>	<b>\$ 183,078.16</b>	<b>\$ 4,114,134.35</b>

\* RET estimate is based on 2008 Budget pro-rata share.

\*\* CAM estimate is based on 2008 Budget pro-rata share.